

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**GERALD ALDERFER, et al.,  
Plaintiffs,**

**v.**

**CLEMENS MARKETS, INC.,  
RETIREMENT SAVINGS AND  
PROFIT SHARING PLAN 003, et al.,  
Defendants.**

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**CIVIL ACTION**

**No. 10-4423**

**ORDER**

**AND NOW**, this 23<sup>rd</sup> day of **December, 2010**, upon consideration of Defendants' Motion Dismiss Complaint, Plaintiff's opposition thereto, Defendants' reply thereon, and for the reasons stated in this Court's Memorandum of December 23, 2010, it is hereby **ORDERED** that:

1. Defendants' Motion to Dismiss (Document No. 8) is **GRANTED** with respect to Plaintiff's claims against Defendant Clemens Markets Inc. Retirement Savings and Profit Sharing Plan 003.
2. Defendants' Motion is also **GRANTED** with respect to Count II of Plaintiff's Complaint.
3. Defendants' Motion is otherwise **DENIED**.
4. Defendants shall file an answer within fourteen (14) days of the date of this Order in accordance with Federal Rule of Civil Procedure 12(a)(4).

**BY THE COURT:**



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**Berle M. Schiller, J.**